

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment and Compilation of Chapter 3-121
Hawaii Administrative Rules
October 14, 1997

SUMMARY

1. §3-121-2 is amended.
2. §3-121-5 is amended.
3. §§3-121-16 to 3-121-17 are amended.
4. §3-121-25 is amended.
5. Chapter 121 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 3

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

SUBTITLE 11

PROCUREMENT POLICY BOARD

CHAPTER 121

PROCUREMENT ORGANIZATION

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SUBCHAPTER 1

PROCUREMENT POLICY BOARD

§3-121-1 Duties. (a) The duties of the procurement policy board are as follows:

- (1) To adopt rules, consistent with chapter 103D, HRS, governing the procurement, management, control, and disposal of any and all goods, services, and construction for the jurisdictions of the State and the counties, including the preparation, maintenance, and content of specifications for goods, services, and construction required by the State;
- (2) To consider and decide matters of policy within the scope of chapter 103D, HRS and to amend or introduce new procurement legislation; and
- (3) To audit and monitor the implementation of its rules and the requirements of chapter 103D, HRS.

(b) The administrator of the state procurement office shall serve as a nonvoting advisor to the policy board. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §§103D-202, 103D-401) (Imp: HRS §§103D-202, 103D-211, 103D-401)

§3-121-2 Procurement directives. (a) The policy board shall issue procurement directives to:

- (1) Cover the policies and procedures for conducting its business;
- (2) Provide general procurement policy guidance; and
- (3) Issue forms, lists, or other information as required.

(b) A copy of each directive shall be provided to the chief procurement officers. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-202)

§3-121-3 Exceptions. The procurement policy board shall not exercise authority over:

- (1) The award or administration of any particular contract, or over any dispute, claim, or

- litigation pertaining thereto; and
- (2) The specifications for goods, services, or construction items, provided that the specifications are prepared in accordance with chapter 103D, HRS, and the rules of the policy board. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §§103D-202, 103D-403) (Imp: HRS §§103D-202, 103D-207, 103D-403)

§3-121-4 (Reserved).

SUBCHAPTER 2

CHIEF PROCUREMENT OFFICERS

§3-121-5 Chief procurement officers identified.

- (a) The chief procurement officer for each of the following state entities shall be:
 - (1) The judiciary--the administrative director of the courts;
 - (2) The senate--the president of the senate;
 - (3) The house of representatives--the speaker of the house of representatives;
 - (4) The office of Hawaiian affairs--the chairperson of the board;
 - (5) The University of Hawaii--the president of the University of Hawaii;
 - (6) The department of education, excluding the Hawaii public library system--the superintendent of education; and
 - (7) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them--the administrator of the state procurement office.
- (b) The chief procurement officers for each of the several counties shall be:
 - (1) The executive branch--the respective finance directors of the several counties; and
 - (2) The legislative branch--the respective chairpersons of the councils of the several counties. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-203)

§3-121-6 Authority and duties. (a) Each chief procurement officer shall serve as the central procurement officer for its respective jurisdiction listed in section 3-121-5, and shall:

- (1) Procure or supervise the procurement of all goods, services, and construction;
- (2) Exercise general supervision and control over all inventories of goods;
- (3) Sell, trade, or otherwise dispose of surplus goods;
- (4) Establish and maintain programs for the inspection, testing, and acceptance of goods, services, and construction; and
- (5) Prepare, issue, revise, and maintain specifications for goods, services, and construction required by the State and monitor the use of the specifications.

(b) Consistent with the provisions of chapter 103D, HRS, and the rules adopted by the policy board to implement its provisions, each chief procurement officer may adopt operational procedures to assist in the performance of these duties and responsibilities.

(c) A chief procurement officer may issue price lists for goods and services pursuant to section 3-122-143(b).

- (1) When price lists are issued, it is mandatory that all departments and agencies procure goods and services from the price lists.
- (2) Exceptions to purchase outside of the price lists are allowed upon approval of the chief procurement officer. The burden of proof that the price list good or service is not suited to the agency's needs shall be the responsibility of the expending agency.
- (3) Use of price lists between chief procurement officers may be authorized upon mutual agreement and commitment to the terms of the price list. The State's commitment shall be stated in the bid document. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §§103D-205, 103D-207, 103D-313)

§3-121-7 Additional duties of the administrator of the state procurement office. In addition to the duties in section 3-121-6, the administrator shall:

- (1) Perform periodic review of the procurement practices of all governmental bodies;

- (2) Assist, advise, and guide governmental bodies in matters relating to procurement;
- (3) Develop and administer a statewide procurement orientation and training program;
- (4) Develop, distribute, and maintain a procurement manual for all state procurement officials; and
- (5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-206)

§3-121-8 Centralization of procurement authority. Except as otherwise provided in chapter 103D, HRS, all rights, powers, duties, and authority relating to the procurement of goods, services, and construction, and the management, control, warehousing, sale, and disposal of goods, services, and construction are vested in the respective chief procurement officers. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-207)

§§3-121-9 to 3-121-15 (Reserved).

SUBCHAPTER 3

DELEGATION OF CHIEF PROCUREMENT OFFICERS' AUTHORITY AND DUTIES

§3-121-16 Delegation of authority. (a) Each chief procurement officer may delegate any authority or duty or may revoke any authority or duty conferred upon the chief procurement officer by chapter 103D, HRS, and rules adopted by the policy board to any head of a purchasing agency within its respective jurisdiction. Factors to consider in making the decision to delegate include:

- (1) The expertise of the potential delegate in terms of procurement knowledge and any specialized knowledge pertinent to the authority to be delegated;
- (2) The past experience of the potential delegate in exercising similar authority;

- (3) The degree of economy and efficiency to be achieved in meeting the State's requirements if authority is delegated;
 - (4) The available resources of the office of the chief procurement officer to exercise the authority if it is not delegated; and
 - (5) The consistency of delegation under similar circumstances.
- (b) The delegation shall be made based on information provided by the head of a purchasing agency, which shall include, but not be limited to:
- (1) The name of the head of the purchasing agency or a designee who will have overall authority for procurement within the agency;
 - (2) The categories of procurement--goods, services, construction;
 - (3) The dollar level of goods, services and construction procurement--small purchases under \$25,000, up to a specified amount, \$25,000 and above, unlimited;
 - (4) The methods of source selection:
 - (A) Competitive sealed bidding: Authority to award or enter into contracts pursuant to section 103D-302, HRS;
 - (B) Competitive sealed proposals: Authority to approve negotiate, award, or enter into contracts pursuant to section 103D-303, HRS;
 - (C) Professional services procurement: Except that as otherwise provided, the authority to negotiate, award, or enter into contracts pursuant to section 103D-304, HRS, rests with the head of a purchasing agency, and does not require a delegation by the chief procurement officer;
 - (D) Small purchases: Authority to award purchase orders pursuant to section 103D-305, HRS;
 - (E) Sole source procurement: Authority to negotiate, award, or enter into contracts pursuant to section 103D-306, HRS. Approvals pursuant to section 103D-306, HRS, shall remain with the chief procurement officer;
 - (F) Emergency procurements: Authority to negotiate, award, or enter into contracts pursuant to section 103D-307,

HRS. Approvals pursuant to section 103D-307, HRS, shall remain with the chief procurement officer; and

- (5) Position titles of those individuals who will be designated procurement officers by the head of the purchasing agency or designee. Information required by paragraphs (2), (3), and (4) shall also be required for each procurement officer delegated such authority. A sample delegation format shall be provided by the chief procurement officer.

(c) Delegation of authority by the head of a purchasing agency to a procurement officer is limited and subject to chapter 103D, HRS, and its implementing rules. Heads of purchasing agencies should familiarize themselves with those limitations.

(d) The delegation from the chief procurement officer shall be in writing and shall specify:

- (1) The activity or function authorized;
- (2) Any limits or restrictions on the exercise of the delegated authority;
- (3) Whether the authority may be further delegated; and
- (4) The duration of the delegation.

(e) The chief procurement officer shall retain in its files each delegation determination. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §§103D-202, 103D-208) (Imp: HRS §103D-208)

§3-121-17 Limits to delegation of authority. The chief procurement officer may delegate to a designee who will sign for the chief procurement officer final approval for the following:

- (1) Exemptions to chapter 103D, HRS, pursuant to paragraph 103D-102(b)(4), HRS.
- (2) Purchases by sole source selection under the provisions of section 103D-306, HRS;
- (3) Emergency procurements pursuant to section 103D-307, HRS;
- (4) Waiver to competitive sealed bid process pursuant to section 3-122-35; and
- (5) Waiver to competitive sealed proposal process pursuant to section 3-122-59. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §§103D-102, 103D-202, 103D-208) (Imp: HRS §§103D-102, 103D-208, 103D-302, 103D-303, 103D-306, 103D-307)

§§3-121-18 to 3-121-24 (Reserved).

SUBCHAPTER 4

PROCUREMENT ADVISORY COUNCIL AND OTHER ADVISORY GROUPS

§3-121-25 Procurement advisory council. (a) The procurement policy board may establish a procurement advisory council for:

- (1) The discussion of problems and recommendations for improvement of the procurement process; and
- (2) Conducting studies, research, analyses, and making reports and recommendations with respect to subjects or matters within the jurisdiction of the policy board, when requested by the policy board.

(b) The procurement advisory council, if created, shall consist of the chief procurement officers or their designated representatives, pursuant to section 3-121-5. If created:

- (1) The chairperson for the council shall be elected bi-annually by a majority of its members from among all of its members;
- (2) The council shall meet at least twice a year. [Eff 12/15/95; am and comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-202, 103D-205)

§3-121-26 Other advisory groups. The chief procurement officer may appoint advisory groups to assist with respect to specifications or procurement in specific areas, and with respect to any other matters within the authority of the chief procurement officer. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §103D-213)

§3-121-27 Reimbursement of expenses. Members of the procurement advisory council and other advisory groups may be reimbursed for expenses incurred in the performance of their duties, subject to such expenditure limitations as may be prescribed by the policy board and applicable law. [Eff 12/15/95; comp NOV 17 1997] (Auth: HRS §103D-202) (Imp: HRS §§103D-202, 103D-205, 103D-213)

Amendments to and compilation of chapter 121, title 3, Hawaii Administrative Rules, on the Summary Page dated October 14, 1997 were adopted on October 14, 1997 following a public hearing held on September 22, 1997 in Honolulu, Hawaii; and via video conference from Honolulu, Hawaii on September 23, 1997 to Hilo, Hawaii; Wailuku, Maui; and Lihue, Kauai; after public notice was given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, The Maui News, and The Garden Island on August 22, 1997.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

ROBERT E. OYAMA
Chairperson
Procurement Policy Board

SAM CALLEJO
State Comptroller

APPROVED:

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Dated: _____

Filed

APPROVED AS TO FORM:

Deputy Attorney General